currently reviewing its part 4044 mortality assumptions (currently GAM–83) as part of a separate rulemaking. *See* March 19, 1997, Notice of Intent to Propose Rulemaking (62 FR 12982). The specific unisex mortality table will depend upon the mortality table adopted in that rulemaking.

In addition, the PBGC is considering whether the amount of lump sum benefits should include an expense load to reflect that the PBGC charges an expense load to the employer. In the past, the PBGC lump sum payment included a load because its lump sum interest rates implicitly included that load. The annuity assumptions from which the new lump sum assumptions would be derived provide for an explicit loading charge that can easily be excluded from lump sum payments. Although the PBGC charges the employer for a load, it generally incurs at least most of the expenses reflected in this charge even when it pays a benefit in lump sum form. *See* 58 FR 5128, 5131 (January 19, 1993).

Effect on Ongoing and Other Nontrusteed Plans

Only those plans trusteed by the PBGC would be affected directly if the PBGC were to discontinue use of its existing lump sum interest rates sometime after 2000. However, plans not trusteed by the PBGC could be affected indirectly. While the PBGC's lump sum rates will no longer be the ''applicable interest rate'' for purposes of Code section 417(e)(3) and ERISA section 205(g)(3) after 2000, some plans may nonetheless continue to provide for the use of the PBGC's lump sum interest rates (if these rates produce a larger distribution for the participant than required under Code section 417(e)(3) and ERISA section 205(g)(3)), on a permanent basis or for a transitional period that extends beyond 2000. These plans may face interpretive issues or unintended consequences. For example, if the PBGC continues to calculate and to publish its historical lump sum interest rates, and a plan refers to the interest rates used by the PBGC to determine lump sum values, there is a question whether this should be interpreted as a reference to the PBGC's new assumptions for determining lump sum values or the rates the PBGC continues to publish based on its former methodology. Similar issues may arise in the case of an annuity contract that provides for use of the PBGC's lump sum interest rates.

In addition to discontinuing use of its existing lump sum assumptions, the PBGC is considering discontinuing calculation and publication of its existing lump sum interest rates sometime after 2000 because these rates are derived under the assumption that present values are calculated using the UP–84 mortality table, which will become increasingly outdated. The interest rate assumptions that are derived in connection with the use of the UP–84 mortality table are lower than those that are derived in connection with the use of a more current mortality table. The PBGC recognizes that discontinuing calculation and publication of these rates would raise additional issues for plans that provide for payment of a lump sum equal to the value produced by these rates, and may raise issues in the case of collective bargaining agreements and annuity contracts that reference these rates.

The Internal Revenue Service has informed the PBGC that, in the context of possible changes to the PBGC interest rates, employers' responses (such as plan amendments or plan interpretations that have the effect of reducing participants' benefits) might cause plans to fail to satisfy the plan qualification requirements of the Internal Revenue Code. The Internal Revenue Service notes that, depending on plan language, issues may arise regarding whether a plan provides definitely determinable benefits, is operated in accordance with its terms, or complies with the requirements of section 411(d)(6). For example, a violation of section 411(d)(6) may occur if a plan is amended to eliminate use of the PBGC's existing lump sum interest rates (or to substitute an alternative interest rate for the PBGC's existing lump sum rates) with respect to benefits that have accrued before the later of the adoption date or the effective date of the amendment, unless the amendment is within the confines of the explicit relief provided in connection with plan amendments that substitute the 30-year Treasury rate for the PBGC interest rate under section 767(d)(2) of RPA and 26 CFR 1.417(e)–1(d)(10)(iii) through (v).

The PBGC is soliciting comments on (1) the assumptions the PBGC should use to value its lump sums after 2000, (2) how long the PBGC should continue to calculate and publish its existing lump sum interest rates, if it were to discontinue their use, and (3) any potential actions that the PBGC could take to lessen the potential consequences that would arise if the PBGC were to discontinue use—or calculation and publication as well as use—of its existing lump sum interest rates. The PBGC will not implement these changes without providing adequate lead time.

The Internal Revenue Service has requested that the PBGC solicit public comments on its behalf concerning the qualification issues that may arise in the context of possible changes to the PBGC interest rates, including the relief under Code section 411(d)(6)(B) that may be appropriate to permit employers to make plan amendments to accommodate the PBGC's change in lump sum interest rate assumptions. For example, it may be appropriate for the Internal Revenue Service to permit an employer to substitute an interest rate that is roughly comparable to the PBGC's existing lump sum rates. Comments on this topic may be sent to the Internal Revenue Service (see **ADDRESSES**).

Issued in Washington, DC, this 21st day of October 1998.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

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PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022, 4044, 4050

RIN 1212–AA91

Valuation of Benefits; Use of Single Set of Assumptions for All Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: The Pension Benefit Guaranty Corporation solicits public comment on its proposal to amend its regulations to provide for the use of a single set of valuation assumptions—those currently used by the PBGC to value benefits to be paid as annuities—for purposes of allocating assets to benefits under section 4044 of ERISA.

While the PBGC is proposing to discontinue using its lump sum valuation assumptions for purposes of allocating assets to benefits, it intends to continue using its existing lump sum assumptions for lump sum payment purposes at least through 2000. The PBGC is considering replacing its lump sum payment assumptions, sometime after 2000, with a modified version of its annuity assumptions. In a separate notice published elsewhere in today's **Federal Register**, the PBGC is soliciting public comment on this possible change.

DATES: Comments must be received on or before December 28, 1998.

ADDRESSES: Comments may be mailed to the Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to Suite 340 at the above address. Comments also may be sent by Internet e-mail to reg.comments@pbgc.gov. Comments will be available for inspection at the PBGC's Communications and Public Affairs Department in Suite 240 at the above address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or James L. Beller, Attorney, Pension Benefit Guaranty Corporation, Office of the General Counsel, Suite 340, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY/TTD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Background

In the case of a distress or involuntary termination, the PBGC's regulations prescribe the benefit valuation assumptions used to allocate assets to benefits under section 4044 of ERISA. These regulations currently provide for the use of two sets of assumptions—one for benefits to be paid as annuities and another for benefits payable as lump sums. Whether a benefit is to be paid as an annuity or is payable as a lump sum is determined under section 4022 of ERISA and the PBGC's implementing regulations. (A more detailed discussion of these aspects of the PBGC's regulations is provided in a separate notice published elsewhere in today's **Federal Register**.)

Amendment to Part 4044—Assumptions for Allocation of Assets

The proposed amendments simplify the PBGC's valuation rules by providing that all benefits will be valued for plan asset allocation purposes under ERISA section 4044 by using the PBGC's annuity assumptions, regardless of the form in which payment may be made under section 4022. These amendments will apply to any plan with a termination date on or after the effective date of the final rule. For plans with termination dates before the effective date of the final rule, benefits will continue to be valued for purposes of allocating assets to benefits under the existing regulations.

Amendment to Part 4022—Assumptions for Lump Sum Payments

While the PBGC will no longer use its existing lump sum interest rates (and other assumptions) for purposes of section 4044, it will continue to use them for lump sum payment purposes under section 4022 at least through 2000. (In a separate notice published elsewhere in today's **Federal Register**, the PBGC is soliciting public comment on possible changes after 2000.) Accordingly, the amendment moves these assumptions from part 4044 to part 4022. The PBGC expects that plan lump sum provisions referring to the PBGC's lump sum interest rates under part 4044 will be interpreted as referring to the assumptions used by the PBGC to value lump sums for payment purposes (those proposed to be moved to part 4022).

Part 4050—Missing Participant Assumptions

The PBGC is making non-substantive changes to the definition of ''missing participant lump sum assumptions'' and ''missing participant annuity assumptions'' in its Missing Participants regulation (Part 4050) to conform to the amendments to parts 4022 and 4044.

E.O. 12866 and the Regulatory Flexibility Act

The PBGC has determined that this proposed rule is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866. The PBGC certifies that, if adopted, the amendment will not have a significant economic effect on a substantial number of small entities. The amendments generally affect only the valuation of *de minimis* benefits and will have an immaterial effect on liabilities associated with plan termination. Accordingly, as provided in section 605(b) of the Regulatory Flexibility Act, sections 603 and 604 do not apply.

List of Subjects

29 CFR Part 4022

Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Pension insurance, Pensions.

29 CFR Part 4050

Pensions, Reporting and recordkeeping requirements.

For the reasons set forth above, the PBGC proposes to amend parts 4022, 4044, and 4050 of 29 CFR chapter XL as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302 and 1322.

2. In § 4022.7, paragraph (d) is revised to read as follows:

§ 4022.7 Benefits payable in a single installment.

* * * * *

(d) *Determination of lump sum amount.* For purposes of paragraph (b)(1)(i)–(iii) of this section, the lump sum value of a benefit shall be calculated by valuing the monthly annuity benefits payable in the form determined under § 4044.51(a) of this chapter and commencing at the time determined under § 4044.51(b) of this chapter. The actuarial assumptions used shall be those described in § 4044.52, except that—

(1) *Loading for expenses.* There shall be no adjustment to reflect the loading for expenses;

(2) *Mortality rates and interest assumptions.* The mortality rates in appendix A to this part and the interest assumptions in appendix B to this part shall apply; and

(3) *Date for determining lump sum value.* The date as of which a lump sum value is calculated is the termination date, except that in the case of a subsequent insufficiency it is the date described in section 4062(b)(1)(B) of ERISA.

Appendix to Part 4022—[Redesignated as Appendix C to part 4022]

3. The Appendix to Part 4022 is redesignated as Appendix C to part 4022, and its heading is revised to read ''Appendix C'' to part 4022—Maximum Guaranteeable Monthly Benefit''.

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

5. Section 4044.52 is revised to read as follows:

§ 4044.52 Valuation of benefits.

The plan administrator shall value all benefits as of the valuation date by—

(a) Using the mortality assumptions prescribed by § 4044.53 and the interest assumptions prescribed in appendix B to this part;

(b) Using interpolation methods, where necessary, at least as accurate as linear interpolation;

(c) Using valuation formulas that accord with generally accepted actuarial principles and practices;

(d) Taking mortality into account during the deferral period of a deferred joint and survivor benefit only with respect to the participant (or other principal annuitant); and

(e) Adjusting the values to reflect loading expenses in accordance with appendix C to this part.

6. In § 4044.53, the section heading and paragraph (a) are revised to read as follows:

§ 4044.53 Mortality assumptions.

(a) *General rule.* Subject to paragraph (b) of this section (regarding certain death benefits), the plan administrator shall use the mortality factors prescribed in paragraphs (c), (d), and (e) of this section to value benefits under § 4044.52.

* * * * *

§ 4044.54 [Removed and Reserved]

7. Section 4044.54 is removed and reserved.

Appendix A to Part 4044—[Amended]

8. In appendix A to part 4044, Table 3—Lump Sum Mortality Table is redesignated as appendix A to part 4022 with the heading ''Appendix A to part 4022—Lump Sum Mortality Rates''.

Appendix B to Part 4044—[Amended]

9. In appendix B to part 4044, the appendix heading is revised to read ''Appendix B to Part 4044—Interest Rates Used to Value Benefits''; the heading of Table I (''Table I—[Annuity Valuations]'') is removed; and Table II—[Lump Sum Valuations] is redesignated as appendix B to part 4022 with the heading ''Appendix B to part 4022—Lump Sum Interest Rates''.

Appendix C to Part 4044—[Amended]

10. In appendix C to part 4044, the table is amended by removing the reference to ''Table I of appendix B for the valuation of annuities'' and replacing it with a reference to ''appendix B for the valuation of benefits''.

PART 4050—MISSING PARTICIPANTS

11. The authority citation for part 4050 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1350.

12. In § 4050.2, the definitions of *missing participant annuity assumptions* and *missing participant lump sum assumptions* are revised to read as follows:

§ 4050.2 Definitions.

* * * * *

Missing participant annuity assumptions means the interest rate assumptions and actuarial methods for valuing benefits under § 4044.52 of this chapter, applied——

(1) As if the deemed distribution date were the termination date;

(2) Using the mortality rates prescribed in Revenue Ruling 95–6, 1995–1 C.B. 80;

(3) Without using the expected retirement age assumptions in §§ 4044.55 through 4044.57 of this chapter;

(4) Without making the adjustment for expenses provided for in § 4044.52(e) of this chapter; and

(5) By adding $300, as an adjustment (loading) for expenses, for each missing participant whose designated benefit without such adjustment would be greater than $5,000.

* * * * *

Missing participant lump sum assumptions means the interest rate and mortality assumptions and actuarial methods for determining the lump sum value of a benefit under section 4022.7(d) of this chapter applied —

(1) As if the deemed distribution date were the termination date; and

(2) Without using the expected retirement age assumptions in §§ 4044.55 through 4044.57 of this chapter.

* * * * *

Issued in Washington, D.C., this 21st day of October, 1998.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

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